

No. 1335

United States
Circuit Court of Appeals
For the Ninth Circuit.

T. M. ANDERSON,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

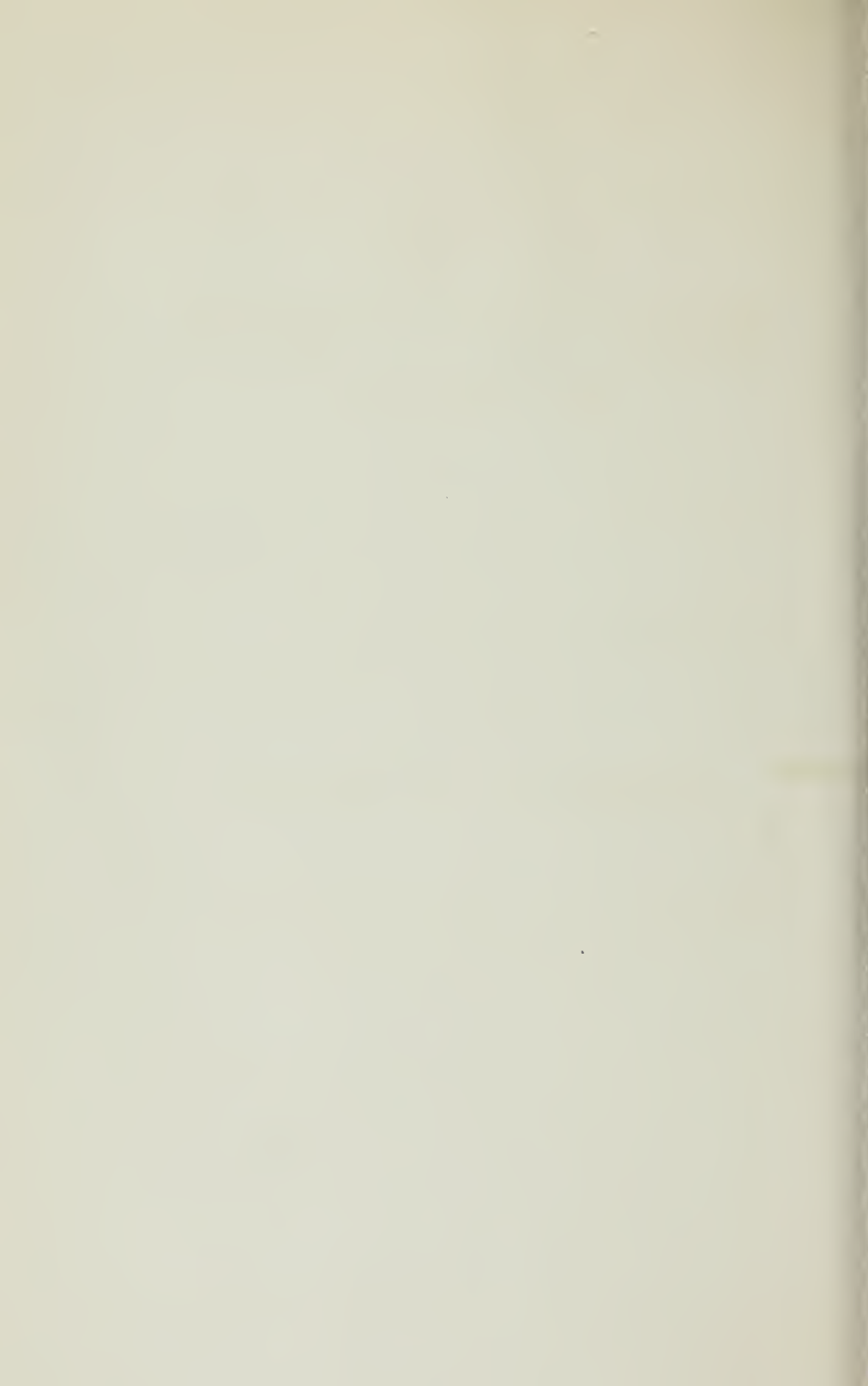
Transcript of Record.

Upon Writ of Error to the United States District
Court, for the Southern District of Cal-
ifornia, Southern Division.

FILED

JAN 24 1921

F. D. MONCKTON,
CLERK



No.

United States
Circuit Court of Appeals
For the Ninth Circuit.

T. M. ANDERSON,

Plaintiff in Error,

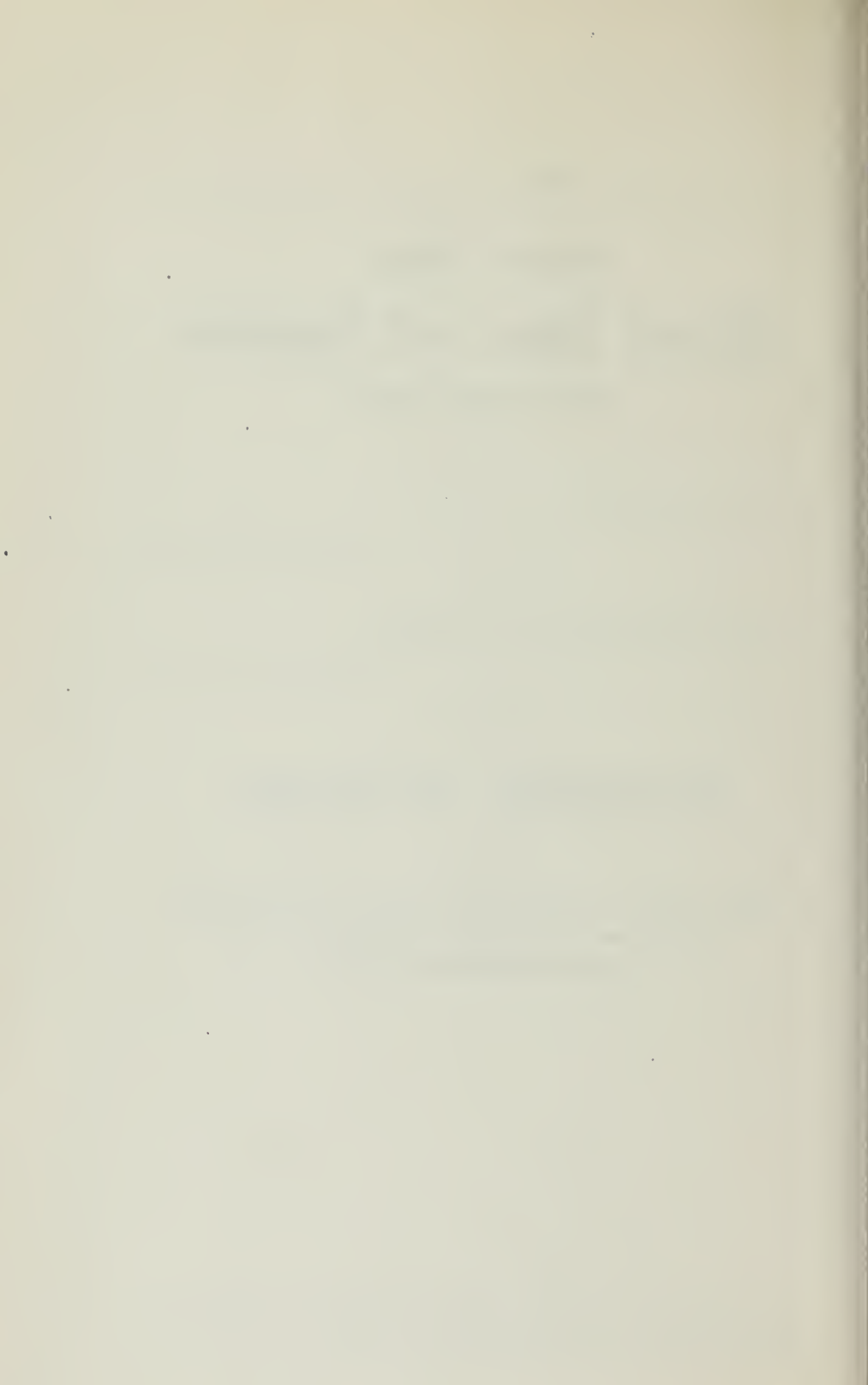
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Court, for the Southern District of Cal-
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

FOR PLAINTIFF IN ERROR:

W. S. ALLEN, Esq., L. W. ALLEN, Esq., of
the law firm Allen, Allen & Swender, 620
Ferguson Building, Los Angeles, California.

FOR DEFENDANT IN ERROR:

ROBERT O'CONNOR, Esq., United States At-
torney, and THOMAS F. GREEN, Esq.,
Assistant United States Attorney, Federal
Building, Los Angeles, California.

United States of America, ss.

To the United States of America and to J. Robert O'Connor, United States District Attorney for the Southern District of California,

GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 24th day of November A. D. 1920, pursuant to a Writ of Error filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action wherein T. M. Anderson is Plaintiff in Error and you are defendant in error to show cause, if any there be, why the judgment mentioned in the said Writ of Error should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable OSCAR A TRIPPET
United States District Judge for the Southern District of California, this 25th day of October, A. D. 1920, and of the Independence of the United States, the one hundred and forty fifth.

Trippet

U. S. District Judge for the
Southern District of California.

[Endorsed]: *In the* United States Circuit Court of Appeals *for the* NINTH CIRCUIT T. M. Anderson, Plaintiff in Error, *vs.* United States of America, Defendant in Error. Citation Filed Oct 25 1920

at — min. past — o'clock — M Chas. N. Williams,
Clerk Louis J. Somers Deputy Received copy of
within citation this 25th day of Oct 1920 Robert
O'Connor U. S. Atty Burton Briggs Crane Assistant
U. S. Atty.

United States of America, ss.

The President of the United States of America,

To the Judges of the District Court of the United
States, for the Southern District of California,
GREETING:

Because in the record and proceedings, and also in
the rendition of the judgment of a plea which is in the
said District Court, before you between T. M. Ander-
son, plaintiff in error, and the United States of Amer-
ica, defendant in error, a manifest error hath hap-
pened, to the great damage of the said T. M. Ander-
son plaintiff in error as by his complaint appears, and
it being fit, that the error, if any there hath been,
should be duly corrected, and full and speedy justice
done to the parties aforesaid in this behalf, you are
hereby commanded, if judgment be therein given, that
then, under your seal, distinctly and openly, you send
the record and proceedings aforesaid, with all things
concerning the same, to the United States Circuit Court
of Appeals for the Ninth Circuit, together with this
writ, so that you have the same at the City of San
Francisco, in the State of California, on the twenty-
fourth day of November next, in the said United
States Circuit Court of Appeals, to be there and then

held, that the record and proceedings aforesaid be inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

WITNESS, the HON. EDWARD D. WHITE,
Chief Justice of the United States, this 25th
(Seal) day of October in the year of our Lord one
thousand nine hundred and twenty and of
the Independence of the United States the
one hundred and forty fifth

CHAS. N. WILLIAMS

Clerk of the District Court of the United
States of America, in and for the
Southern District of California.

By R S Zimmerman

Deputy Clerk.

The above writ of error is hereby allowed.

Trippet

Judge.

I hereby certify that a copy of the within Writ of Error was on the 25th day of October, 1920, lodged in the office of the Clerk of the said United States District Court, for the Southern District of California, Southern Division, for said Defendants in Error.

Clerk of the District Court of the
United States for the Southern Dis-
trict of California.

(Seal)

By R S Zimmerman

Deputy Clerk.

The within copy of Writ of Error is hereby, on this
day of....., 19....., lodged
 in the office of the Clerk of the said United States
 District Court, for the Southern District of California,
 Southern Division, for said Defendants in Error.

.....

 Attorney.. for Plaintiff.. in Error.

Clerk of the District Court of the
 United States for the Southern Dis-
 trict of California.

By
 Deputy Clerk.

[Endorsed]: United States Circuit Court of Ap-
 peals *for the* NINTH CIRCUIT T. M. Anderson,
Plaintiff.. in Error vs. United States of America,
Defendant.. in Error Writ of Error Filed Oct 25
 1920 at — ~~min. past~~ — ~~o'clock~~ — M Chas N. Wil-
 liams, Clerk Louis J. Somers Deputy.

No. _____ Filed _____

Vio. Chap. 115, Act Feb. 23, 1917. False representa-
 tions to intending purchaser or settler as to public
 lands of the U. S. subject to entry or sale.

IN THE DISTRICT COURT OF THE UNITED
 STATES IN AND FOR THE SOUTHERN
 DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION.

At a stated term of said Court, begun and holden
 at the City of Los Angeles, within the Southern Divi-

sion of the Southern District of California, on the second Monday of July, in the year of our Lord one thousand nine hundred and twenty;

The Grand Jurors of the United States of America, duly chosen, selected and sworn, within and for the Division and District aforesaid, on their oath present:

That T. M. ANDERSON, whose full and true name is, other than as herein stated, to the Grand Jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the eighth day of September, in the year of our Lord one thousand nine hundred and eighteen, at or near the station of Mortmar, County of Imperial, State of California, within the Southern Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully and unlawfully, and for a promised reward of Two Hundred Forty (\$240.00) Dollars, represent to an intending settler and entry man, to-wit; one Stephan Zsinko, that a certain tract of land shown to the said Stephan Zsinko at said time and place by the said T. M. ANDERSON was public land of the United States, subject to sale, settlement and entry, and did undertake to locate said Stephan Zsinko on said land, and the said T. M. ANDERSON further represented to the said Stephan Zsinko that the said land so shown to the said Stephan Zsinko was of a particular surveyed description, to-wit:

West Half of the Southwest Quarter of
Section 22, and the Southeast quarter of the

southwest quarter of Section 22, and the southwest quarter of the southeast quarter of Section 22, Township 7 South, Range 10 East, S. B. M.

with the intent on the part of the said T. M. ANDERSON to deceive the said Stephan Zsinko, to whom said representations were made, and the said Stephan Zsinko was then and there deceived by the said representations, and did pay to the said T. M. ANDERSON as a consideration for his services in undertaking to so locate the said Stephan Zsinko on said land, the sum of Two Hundred Forty (\$240.00) Dollars, the said T. M. ANDERSON then and there well knowing that the land so shown to the said Stephan Zsinko was not public land of the United States subject to sale, settlement and entry, and that the land so shown to the said Stephan Zsinko was not the

West half of the Southwest Quarter of Section 22, and the southeast quarter of the southwest quarter of Section 22, and the southwest quarter of the southeast quarter of Section 22, Township 7 South, Range 10 East, S. B. M.

but on the contrary was the

East half of the northeast quarter of Section 29, and the south half of the northwest quarter of Section 28, Township 7 South, Range 10 East, S. B. M.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

SECOND COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That T. M. ANDERSON, whose full and true name is, other than as herein stated, to the Grand Jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the first day of January, in the year of our Lord one thousand nine hundred and nineteen, at or near the town of Salton, County of Imperial, State of California, within the Southern Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully and unlawfully, and for a promised reward of Four Hundred Eighty Dollars (\$480.00), represent to an intending settler and entry man, to-wit: one Emerson J. Rood, that a certain tract of land shown to the said Emerson J. Rood at said time and place by the said T. M. ANDERSON was public land of the United States, subject to sale, settlement and entry, and did undertake to locate said Emerson J. Rood on said land; and the said T. M. ANDERSON further represented to the said Emerson J. Rood that the said land so shown to the said Emerson J. Rood was of a particular surveyed description, to-wit:

East half of Section 8, Township 8, South,
Range 11 East, S. B. M.

with the intent on the part of the said T. M. ANDERSON to deceive the said Emerson J. Rood, to whom said representations were made, and the said Emerson

J. Rood was then and there deceived by the said representations, and did pay to the said T. M. ANDERSON as a consideration for his services in undertaking to so locate the said Emerson J. Rood on said land, the sum of Four Hundred Eighty Dollars (\$480.00), the said T. M. ANDERSON then and there well knowing that the land so shown to the said Emerson J. Rood was not public land of the United States subject to sale, settlement and entry, and that the land so shown to the said Emerson J. Rood was not the

East half of Section 8, Township 8 South,
Range 11 East, S. B. M.

but on the contrary was

A part of the northeast quarter of Section 17; a part of the South half of Section 9, and a part of the Northwest quarter of Section 16, Township 8 South, Range 11 East, S. B. M.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

THIRD COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That T. M. ANDERSON, whose full and true name is, other than as herein stated, to the Grand Jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the sixth day of August, in the year of our Lord

one thousand nine hundred and eighteen, at or near the town of Salton, County of Imperial, State of California, within the Southern Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully and unlawfully, and for a promised reward of Two Hundred Forty (\$240.00) Dollars, represent to an intending settler and entry man, to-wit: one J. W. O'Hagan, that a certain tract of land shown to the said J. W. O'Hagan at said time and place by the said T. M. ANDERSON was public land of the United States, subject to sale, settlement and entry, and did undertake to locate said J. W. O'Hagan on said land, and the said T. M. ANDERSON further represented to the said J. W. O'Hagan that the said land so shown to the said J. W. O'Hagan was of a particular surveyed description, to-wit:

The South half of the Southwest Quarter and the South half of the Southeast Quarter of Section 2, Township 8 South, Range 10 East, S. B. M., and that all of said South Half of the Southwest Quarter and the South Half of the Southeast Quarter of said Sec. 2, was, with the exception of not more than four acres, above and free from being inundated by the waters of the Salten Sea.

with the intent on the part of the said T. M. ANDERSON to deceive the said J. W. O'Hagan, to whom said representations were made, and the said J. W. O'Hagan was then and there deceived by the said

representations, and did pay to the said T. M. ANDERSON as a consideration for his services in undertaking to so locate the said J. W. O'Hagan on said land, the sum of Two Hundred Forty (\$240.00) Dollars, the said T. M. ANDERSON then and there well knowing that the land so shown to the said J. W. O'Hagan was not public land of the United States subject to sale, settlement and entry, and that the land so shown to the said J. W. O'Hagan was not the

South half of the southwest quarter, and the south half of the southeast quarter of section 2, Township 8 South, Range 10 East, S. B. M., and that all of said South Half of the Southwest Quarter and the South Half of the Southeast Quarter was, with the exception of not more than four acres, above and free from being inundated by the waters of the Salten Sea.

but on the contrary was

A part of the West Half of the Southwest Quarter of Section 1; a part of the Northwest Quarter of the Northwest Quarter of Section 12; a part of the North half of the Northeast Quarter, and a part of the North Half of the Northwest Quarter of Section 11, and a part of the South Half of the Southwest Quarter, and the South Half of the Southeast Quarter, Section 2, all of Township 8 South, Range 10 East, S. B. M.; and in truth and in fact, more than forty

acres of the South Half of the Southwest Quarter of Section 2, Township 8 **South**, Range 10 East, S. B. M., was then and there inundated and covered by the waters of the Salten Sea.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

Robert O'Connor United States *Attorne*
T. F. Green ASST. U. S. ATTORNEY

[Endorsed]: Form No. 195. No. 2360 Crim UNITED STATES DISTRICT COURT, SOUTHERN *District of* CAL SOUTHERN *Division*. THE UNITED STATES OF AMERICA vs. T. M. ANDERSON. INDICTMENT Vio. Chap. 115, Act Feb. 23, 1917. False representations to intending purchaser or settler as to public lands of U. S. subject to entry or sale. *A true bill*, Leo S. Chandler *Foreman*. Filed Oct 8 1920 Chas. N. Williams, Clerk By Wm W. Handy Deputy Clerk *Bail*, \$1500 00 7—433

At a stated Term, to wit: the July Term of the District Court of the United States of America, within and for the Southern District of California, Southern Division, held at the Court Room thereof, in the City of Los Angeles, California, on Friday, the 8th day of October, in the year of our Lord One Thousand Nine Hundred and Twenty.

PRESENT: The Honorable BENJAMIN F. BLEDSOE, District Judge.

United States of America,)	
	Plaintiff,)
vs.	)	No. 2360 Crim.
T. M. ANDERSON,)	
	Defendant.)

An indictment having been presented to the court at this time, it is now by the court ordered that same be, and it hereby is filed, and it is further ordered that the bond of defendant be fixed in the sum of \$1500.00.

At a stated Term, to wit: the July Term of the District Court of the United States of America, within and for the Southern District of California, Southern Division, held at the Court Room thereof, in the city of Los Angeles, California, on Wednesday, the 13th day of October, in the year of our Lord One Thousand Nine Hundred and Twenty.

PRESENT: The Honorable OSCAR A. TRIPPET,
District Judge.

United States of America,)	
	Plaintiff,)
vs.	)	No. 2360 Crim.
T. M. Anderson,)	
	Defendant.)

This cause coming on at this time for the arraignment of defendant and for the entry of his plea; T. F. Green, Esq., Assistant U. S. Attorney, appearing for the Government, and defendant being present on bail with his attorney, W. S. Allen, Esq., and defendant T. M. Anderson having been called and arraigned, and having stated his true name to be T. M. Anderson, and having waived the formal reading of the

Indictment, and being required to plead thereto, now enters his plea of Not Guilty; now on motion of T. F. Green, Esq., it is ordered that this cause be, and the same hereby is set down for trial on Oct. 19, 1920.

At a stated Term, to wit: the July Term of the District Court of the United States of America, within and for the Southern District of California, Southern Division, held at the Court Room thereof, in the City of Los Angeles, California, on Monday the 18th day of October, in the year of Our Lord One Thousand Nine Hundred and Twenty.

PRESENT: The Honorable OSCAR A. TRIPPET,
District Judge.

United States of America,)	
	Plaintiff,)	
vs.	)	No. 2360 Crim.
T. M. Anderson,)	
	Defendant.)	

This cause coming on at this time for hearing on Demurrer; T. F. Green, Esq., Assistant U. S. Attorney, appearing for the Government; and W. S. Allen, Esq., appearing for the defendant; now W. S. Allen, Esq., of counsel as aforesaid, having made argument on behalf of defendant, in support of Demurrer; and T. F. Green, Esq., of counsel as aforesaid, having made reply thereto, it is now by the court ordered that this Demurrer be, and the same hereby is overruled.

At a Stated Term, to wit: the July Term of the District Court of the United States of America, within and for the Southern District of California, Southern

Division, held at the Court Room thereof, in the city of Los Angeles, California, on Tuesday the 19th day of October, in the year of Our Lord One Thousand Nine Hundred and Twenty.

PRESENT: The Honorable OSCAR A. TRIPPET,
District Judge.

United States of America,)	
	Plaintiff,)
vs.	)	No. 2360 Crim.
T. M. Anderson,)	
	Defendant.)

This cause coming on at this time for trial by the court and a jury to be impanelled; T. F. Green, Esq., Assistant U. S. Attorney, appearing for the Government; and defendant T. M. Anderson being present in court with his counsel L. W. Allen, Esq., and Ed. de St. Maurice being present as shorthand reporter of the proceedings and testimony; and now on motion of L. W. Allen, Esq., of counsel as aforesaid, it is by the court ordered that the firm of Allen, Allen and Swenden be substituted as counsel for defendant instead of L. W. Allen; and the counsel for the respective parties having stated that they are ready for trial to proceed, it is now by the court ordered that the trial proceed, and that a jury of 12 men be impanelled herein, and thereupon the names of the following petit jurors having been drawn from the box and called and sworn on their voir dire, to wit: R. B. Williamson, J. W. Walter, A. Blakeboro, Truman Berry, Charles C. Stanley, John Dodson, James F. Rothgeb, Oscar A. Traversy, John A. Burton, Geo. J. Brunner, J. D. Fields, and Frank Dick; and

Said jurors having been examined by the court and counsel for the respective parties for cause and passed for cause; and R. B. Williamson and A. Blakeboro, having been peremptorily challenged by counsel for the defendant, and excused; and the names of two other petit jurors having been drawn from the jury box, called and sworn on their voir dire, to wit: J. Herbert Hall and Robert W. Poindexter; and said two petit jurors having been examined by the court and counsel for the respective parties and passed for cause; and Robert W. Poindexter, having been peremptorily challenged by the Government, and by the court excused; and the name of one other petit juror having been drawn from the jury box and called and sworn on his voir dire, to wit: L. W. Ballard; and said juror having been examined by the court and counsel for the respective parties and passed for cause; and having been challenged peremptorily by counsel for the defendant and excused; and the name of one other petit juror having been drawn from the jury box and called and sworn on his voir dire, to wit: Max N. Newmark; and said juror having been examined by the court and counsel for the respective parties and passed for cause; and said jury having been accepted as the jury to try this cause; said jury as so impanelled and sworn, consisting of the following named persons, to wit:

- | | |
|-----------------------|----------------------|
| 1. Max N. Newmark | 7. James F. Rothgeb |
| 2. J. W. Walter | 8. Oscar A. Traversy |
| 3. J. Herbert Hall | 9. John A. Burton |
| 4. Truman Berry | 10. Geo. J. Brunner |
| 5. Charles C. Stanley | 11. J. D. Fields |
| 6. John Dodson | 12. Frank Dick |

and the court having given to the jury an explanation of the United States land surveys; and

Now at the hour of 11:15 o'clock A. M., the court having duly admonished and cautioned the jury not to talk to anyone about the case, or any matter connected therewith, or permit anyone to talk to them about the case, or any matter connected therewith, or to talk with each other about the case, until it is finally submitted to them under the instructions of the court; and

Now at the hour of 11:15 o'clock A. M., the court having ordered that a recess be taken for 10 minutes; and

Now at the hour of 11:25 o'clock A. M., the court having reconvened, and defendant being present as before, and counsel for the respective parties being present as before; and Ed. de St. Maurice, being present as shorthand reporter; and the court announced that the jury is present; and

W. J. Wilhelm, having been called and sworn, and having testified on behalf of the Government; and in connection with the said testimony the following exhibits having been offered by the court and admitted and ordered filed, to wit:

Court's Ex. 1. – Drawing of Surveys;
and now at the hour of 12:10 o'clock P. M., the court having admonished the jury in the usual manner; and having ordered that a recess be taken to the hour of 2:00 o'clock P. M., of this day; and

Now at the hour of 2:00 o'clock P. M., the court having reconvened, and counsel for respective parties

being present as before, and defendant being present, and Ed. de St. Maurice, being present as shorthand reporter; and the court having announced the jury is present, and all being present; and

W. H. Wilhelm, a witness heretofore sworn, having resumed the stand and having testified further on behalf of the Government; and

E. J. Rood, having been called and sworn, and having testified on behalf of the Government; and the following exhibits having been offered in evidence, are admitted and ordered filed, to wit:

U. S. Ex. 2. – Letter Anderson to Rood 11/18/18

U. S. Ex. 3. – Contract Anderson and Rood

U. S. Ex. 4. – Government land entry

U. S. Ex. 5. – Proposed irrigation system

U. S. Ex. 6. – Supplemental affidavit

U. S. Ex. 7. – Homestead entry; and

Now at the hour of 3:25 o'clock P. M., the court orders that a recess be taken for five minutes; and

Now at the hour of 3:30 o'clock P. M., the court having reconvened, and defendant being present as before, and counsel for the respective parties being present as before, and Ed. de St. Maurice being present as shorthand reporter; and the court having announced that the jury is present; and

E. O. Rood, a witness heretofore sworn, having resumed the stand, and having testified further on behalf of the Government; and

H. J. Humphrey, having been called and sworn, and having testified on behalf of the Government; and

Now at the hour of 4:30 o'clock P. M., the court having admonished the jury in the usual manner, it is now by the court ordered that a recess be taken to Wednesday, Oct. 20, 1920, at the hour of 10 o'clock A. M., and that this cause be, and the same hereby is continued to that time for further trial.

At a stated term, to wit: the July Term of the District Court of the United States of America, within and for the Southern District of California, Southern Division, held at the Court Room thereof, in the City of Los Angeles, California, on Wednesday the 20th day of October, in the year of Our Lord One Thousand Nine Hundred and Twenty.

PRESENT: The Honorable OSCAR A. TRIPPET,
District Judge.

United States of America,)	
	Plaintiff,)
vs.	)	No. 2360 Crim.
T. M. Anderson,)	
	Defendant.)

This cause coming on at this time for further trial by the court; T. F. Green, Esq., Assistant U. S. Attorney, appearing for the Government; and defendant T. M. Anderson being present on bail together with his counsel L. W. Allen and W. S. Allen, of the law firm of Allen, Allen and Swender, counsel for the defendant; and Ed. de St. Maurice, being present as shorthand reporter of the proceedings and testimony; and the court having announced that the jury is present; and having ordered that the trial be proceeded with; and

H. J. Humphreys, a witness heretofore sworn, having resumed the stand and having testified further on behalf of the Government, and in connection with said testimony the following exhibit having been offered in evidence, is admitted and ordered filed, to wit:

U. S. Ex. 8. – Government Survey Stake; and

W. H. Wilhelm, a witness heretofore sworn, having been recalled, and having testified further on behalf of the Government; and

J. W. O'Hagan, having been called and sworn, and having testified on behalf of the Government; and in connection with the said testimony the following exhibits having been offered in evidence, are admitted and ordered filed, to wit:

U. S. Ex. 9. – Letter Anderson to O'Hagan

U. S. Ex. 10. – Letter Anderson to O'Hagan

U. S. Ex. 11. – Contract Anderson to O'Hagan

U. S. Ex. 12. – Homestead entry S½ SE¼

U. S. Ex. 13. – Letter Anderson to O'Hagan

Now at the hour of 11:30 o'clock A. M., the court having duly admonished the jury and cautioned it not to talk to anyone about the case, or any matter connected therewith, or permit anyone to talk to them about the case or any matter connected therewith; or to talk with each other about the case, until it is finally submitted to them under the instructions of the court; and the court having thereupon ordered that a recess be taken for five minutes; and

Now at the hour of 11:35 o'clock A. M., the court having reconvened and defendant and counsel for the respective parties being present as before, and Ed. de

St. Maurice being present as shorthand reporter; and the court having announced that the jury is present; and

J. W. O'Hagan, a witness heretofore sworn, having resumed the stand, and having testified further on behalf of the Government; and Stephen Zsiuko having been called, sworn and having testified on behalf of the Government, and in connection with said testimony the following exhibits having been offered in evidence, are admitted and ordered filed, to wit:

U. S. Ex. 14. – Contract Anderson to Zsiuko

U. S. Ex. 15. – Part of Superior Court Record

U. S. Ex. 16. – Homestead Entry;

Now at the hour of 12:00 o'clock noon, the court having duly admonished the jury in the usual manner, now orders that a recess be taken to the hour of 2:00 o'clock P. M., of this day, and that this cause be, and the same hereby is continued to that time; and

Now at the hour of 2:00 o'clock P. M., of this day court having reconvened, and defendant, and counsel for the respective parties being present as before, and Ed. de St. Maurice, being present as shorthand reporter; and the court having announced that the jury is present; and

Stephen Zsiuko, a witness heretofore sworn, having resumed the stand, and having testified further on behalf of the Government; and in connection with said testimony, the following exhibits having been offered in evidence, are admitted and ordered filed herein, to wit:

U. S. Ex. 17. – Relinquishment

U. S. Ex. 18. – Desert Land Entry

U. S. Ex. 19. – Description of land; and

H. W. Hudson, having been called and sworn, and having testified on behalf of the Government; and

Now at the hour of 2:50 o'clock P. M., the Government having no further testimony to offer, rests; and

L. W. Allen, Esq., of counsel as aforesaid for the defendant, having moved the court to declare a non-suit as to the third count of the indictment, and said motion having now by the court been overruled; and

E. O. Rood, a Government witness heretofore sworn, having been recalled by the defendant, and having resumed the stand and having testified further; and in connection with said testimony the following exhibits having now been offered in evidence, are admitted and ordered filed, to wit:

U. S. Ex. 20. – Blueprint of Land Sections

U. S. Ex. 21. – Blueprint of Land Sections; and

T. M. Anderson, having been called and sworn, and having testified on behalf of the defendant; and

Now at the hour of 3:25 o'clock P. M., the court orders that a recess for five minutes be taken; and

Now at the hour of 3:30 o'clock P. M., the court having reconvened, and defendant and counsel for the respective parties being present as before, and Ed. de St. Maurice, being present as shorthand reporter; and the court having announced that the jury is present; and

T. M. Anderson, a witness heretofore sworn, having resumed the stand, and having testified further on behalf of the defendant; and

Now at the hour of 4:15 o'clock P. M., the court having admonished the jury in the usual manner, orders that a recess be taken to Thursday, October 21, 1920, and that the cause be continued to that time for further trial.

At a stated term, to wit: The July Term of the District Court of the United States of America, within and for the Southern District of California, Southern Division, held at the Court Room thereof, in the city of Los Angeles, California, on Thursday the 21st day of October, in the year of Our Lord One Thousand Nine Hundred and Twenty.

PRESENT: The Honorable OSCAR A. TRIPPET,
District Judge.

United States of America,)	
	Plaintiff,)	
vs.	)	No. 2360 Crim.
T. M. Anderson,)	
	Defendant.)	

This cause coming on at this time to be further tried by the court, a jury having heretofore been impanelled; T. F. Green, Esq., Assistant U. S. Attorney, appearing for the Government; and defendant being present in court on his own recognizance with his attorneys, Allen and Allen, Esqs., of the law firm of Allen, Allen & Swender, counsel for the defendant; and John P. Doyle, being present as shorthand reporter of the proceedings and testimony; and the court having announced that the jury is present; and having ordered that the trial be proceeded with; and

T. M. Anderson, defendant, having resumed the stand and having testified further on his own behalf,

and in connection with said testimony, the following exhibits are offered in evidence and admitted and ordered filed herein, to wit:

Deft's Ex. B. – Map of Power Line

Deft's Ex. C. – Map of Power Line

Deft's Ex. D. – Certified Field Notes

Deft's Ex. E. – Certified Field Notes

U. S. Ex. 22. – Advertisement Feb. 13, 1919; and

Now at the hour of 11:30 o'clock A. M., the court having given the jury the usual admonition, a recess is taken for five minutes; and

Now at the hour of 11:35 o'clock A. M., the court having reconvened, and all being present as before, the counsel for the respective parties being present as before, and John P. Doyle, being present as shorthand reporter of the proceedings and testimony; and

T. M. Anderson, defendant, having resumed the stand, and testified further on his own behalf; and

L. G. Barrow, James M. Dewey and W. S. Summer, having respectively been called, sworn, and having respectively given their testimony on behalf of the defendant; and

James M. Dewey, a witness heretofore sworn, having been recalled, and having testified further on behalf of the defendant; and

Now at the hour of 2:55 o'clock P. M., the defendant having no further testimony to offer, rests; and

H. W. Hudson, a witness heretofore sworn, having been recalled to the stand, and having testified further on behalf of the Government in rebuttal; and

W. B. Swindell, having been called, sworn, and having testified on behalf of the Government; and

W. H. Wilhelm, a witness heretofore sworn, having been recalled to the stand, and having testified for the Government, in rebuttal; and

Now at the hour of 3:40 o'clock P. M., the court having given the jury the usual admonition, a recess is taken for five minutes; and

Now at the hour of 3:45 o'clock P. M., the court having reconvened, and all being present as before, and counsel for the respective parties being present as before, and John P. Doyle, being present as shorthand reporter; and the court having announced the jury as present; and

W. H. Wilhelm, a witness heretofore sworn, having resumed the stand, and having testified further in rebuttal for the Government; and

Stephen Zsuiko, a witness heretofore sworn, having been recalled to the stand, and having testified on behalf of the Government in rebuttal; and

E. O. Rood, and J. W. O'Hagan, witnesses heretofore sworn, having been recalled to the stand, and having testified for the Government in rebuttal; and

Now at the hour of 3:55 o'clock P. M., the Government having no further testimony to offer, rests; and

W. B. Swindell, and T. M. Anderson, heretofore sworn, having been recalled by the defendant and having testified further on behalf of the defendant; and

O. H. Lee, H. Clark Ferry and M. C. McCulla, having been respectively called, sworn, and having

respectively given their testimony on behalf of the defendant; and

Now at the hour of 4:09 o'clock P. M., T. F. Green, Esq., of counsel as aforesaid, having presented the opening argument on behalf of the Government; and

Now at the hour of 4:30 o'clock P. M., L. W. Allen, Esq., of counsel as aforesaid, having presented the opening argument on behalf of the defendant; and

Now at the hour of 4:40 o'clock P. M., the court having given the jury the usual admonition, a recess is taken in this cause until Friday, Oct. 22, 1920, for further trial.

At a stated term, to wit: The July Term of the District Court of the United States of America, within and for the Southern District of California, Southern Division, held at the Court Room thereof, in the city of Los Angeles, California, on Friday the 22nd day of October, in the year of Our Lord One Thousand Nine Hundred and Twenty.

PRESENT: The Honorable OSCAR A. TRIPPET,
District Judge.

United States of America,)	
	Plaintiff,)
vs.	)	No. 2360 Crim.
T. M. Anderson,)	
	Defendant.)

This cause coming on at this time for further trial by the court; T. F. Green, Esq., Assistant U. S. Attorney, appearing for the Government, and defendant being present in court on his own recognizance with his counsel, W. S. Allen and L. W. Allen, Esq., of the

law firm of Allen, Allen and Swender, counsel for the defendant; and W. C. Wren, being present as shorthand reporter of the proceedings and testimony; and the court having announced the jury as present and having ordered the trial proceeded with; and

W. S. Allen, Esq., of counsel as aforesaid, having presented the closing argument on behalf of the defendant; and

T. F. Green, Esq., of counsel as aforesaid, having presented the closing argument on behalf of the Government; and

The Court having given its instructions to the jury, and now, at the hour of 11:00 o'clock A. M., J. W. Bell, a Deputy U. S. Marshal, having been sworn to take charge of the jury, and the jury having retired in charge of said Deputy U. S. Marshal, for the deliberation of their verdict; and

Now at the hour of 12:05 o'clock P. M., and good cause appearing therefor, it is by the court ordered that the Deputy U. S. Marshal take the jury out to dinner at the expense of the Government; and

Now at the hour of 3:15 o'clock P. M., the jury having come into court, and the court having announced that the jurors are all present; and all being present, and the jury having been asked by the court if they have agreed upon a verdict, and having, through their foreman, stated that they had so agreed, and having been required to present their verdict, and said verdict having been read by the clerk, and the verdict as so presented and read by the clerk, having

been ordered by the court to be entered and recorded, said verdict as so rendered, entered and recorded, being as follows, to wit:

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

THE UNITED STATES OF)	
AMERICA,	Plaintiff,)	
vs.	)	No. 2360 Crim.
T. M. ANDERSON,)	
Defendant.)	

WE, the JURY in the above-entitled cause, find the DEFENDANT T. M. ANDERSON GUILTY as charged in the SECOND COUNT OF THE INDICTMENT, and NOT GUILTY as charged in the THIRD COUNT OF THE INDICTMENT, and cannot agree as to the FIRST COUNT OF THE INDICTMENT.

LOS ANGELES, CALIFORNIA, OCTOBER 22, 1920.

M. N. NEWMARK, FOREMAN

It is now by the court ordered that this cause be, and the same hereby is continued to Monday, Oct. 25, 1920, for imposing of sentence as to the second count of the Indictment, defendant to remain on bond given in 1843 Crim.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION.

)	
)	
THE UNITED STATES OF)	
AMERICA,	) Plaintiff,	
vs.	)	No. 2360 Crim.
T. M. ANDERSON,)	
Defendant.)	

WE, the JURY in the above-entitled cause, find the Defendant, T. M. ANDERSON, ~~GUILTY as charged in the FIRST COUNT of the INDICTMENT, and~~ GUILTY as charged in the SECOND COUNT of the INDICTMENT, and not GUILTY as charged in the THIRD COUNT of the INDICTMENT. and cannot agree on the first count of the Indictment.

LOS ANGELES, CALIFORNIA, OCTOBER 22, 1920.

M. N. NEWMARK, FOREMAN.

Filed Oct 22 1920. Chas. N. Williams, Clerk Fred E. Subith, Deputy.

At a Stated Term, to wit: the July Term of the District Court of the United States of America, within and for the Southern District of California, Southern Division, held at the Court Room thereof, in the city of Los Angeles, California, on Monday the 25th day of October, in the year of Our Lord One Thousand Nine Hundred and Twenty.

PRESENT: The Honorable OSCAR A. TRIPPET,
District Judge.

United States of America,)	
	Plaintiff,)
vs.	)	No. 2360 Crim.
T. M. Anderson,)	
	Defendant.)

This cause coming on at this time for imposing of sentence as to the second count of the indictment; and T. F. Green, Esq., Assistant U. S. Attorney, appearing for the Government, and defendant being present on bail, with his counsel L. W. Allen, Esq., and having been called and having made a statement on behalf of himself; the court now pronounces sentence upon defendant for the crime of which he now stands convicted, namely: Vio. Chap. 115, Act Feb. 23, 1917. False representations to intending purchaser or settler as to public lands of the U. S., subject to entry or sale: and the judgment of the court is that defendant T. M. Anderson be confined in the Los Angeles County Jail for the term and period of 10 months.

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)

United States of America,

Plaintiff,

vs.

T. M. Anderson,

Defendant)

) No. 2360 Crim.

ATTEST my hand and the seal of said
Court, this 27th day of October, A. D.,
1920.

(SEAL) Chas. N. Williams, Clerk.
By Fred E. Subith,
Deputy Clerk.

[Endorsed]: No 2360 Crim. IN THE DISTRICT COURT OF THE UNITED STATES for the Southern District of California, Southern Division. UNITED STATES OF AMERICA, PLAINTIFF, vs. T. M. ANDERSON, DEFENDANT. JUDGMENT ROLL Filed October 27 1920 CHAS. N.

WILLIAMS Clerk By Fred E Subith Deputy Clerk
Recorded Minute Book No 38 Page 112

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION.

UNITED STATES OF AMERICA,)	
)	
	) Plaintiff,	No. 2360-
	)	Crim.
vs.)	
	)	BILL OF
T. M. ANDERSON,	)	EXCEP-
	)	TIONS.
	) Defendant.	
)	
)	

Be it remembered that heretofore, to-wit, on the 8th day of October, 1920, the Grand Jury of the United States, in and for the Southern District of California, Southern Division, did find and return unto the above entitled Court its indictment against the defendant, T. M. Anderson, for violation of Act of February 23, 1917, Chap. 115, relating to "False Representations to Intending Purchaser or Settler as to Public Lands of the United States Subject to Entry or Sale"; and thereafter, on the 14th day of October, 1920. the said T. M. Anderson entered a plea of "not guilty" to said indictment; that thereafter, on October 16, 1920, the defendant filed a demurrer to the indict-

(Testimony of A. A. Wilhelm.)

ment, which demurrer was argued before the Court on October 18th, 1920, and was at said time overruled by the Court.

That thereafter, on the 19th day of October, 1920, the said cause came on duly and regularly for trial, the Government being represented by T. F. Green, Esq., Assistant United States District Attorney for the Southern District of California, and the defendant being represented by Messrs. Lawrence W. Allen, W. S. Allen, and Hubert W. Swender.

The indictment was composed of three counts, and for the sake of convenience the counts may be called the Zsinko, Rood and O'Hagan, being counts one, two and three of the indictment in the order named.

Upon the first count, that is, the Zsinko count, the jury disagreed.

Upon the third count, that is, the O'Hagan count, the defendant was acquitted.

Upon the second count, that is, the Rood count, the defendant was convicted. It is upon the second count to the indictment that defendant takes this appeal.

Testimony of Mr. A. A. Wilhelm, for the Government:

“A. A. WILHELM,

a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

THE CLERK: What is your name?

A. A. A. Wilhelm.

DIRECT EXAMINATION

BY MR GREEN:

Q What is your business, Mr. Wilhelm?

A I am a special agent of the Government, representing the General Land Office.

Q How long have you been in that position?

A A little over ten years.

.

Q Now, referring to Sections 8, 9, 17, and 16 in that particular District, Township 8 South, Range 11 East, have you recently examined that particular District?

A I have examined it.

Q Referring to Sections 8 and 9 in particular, have you examined that?

A I have.

Q How recently?

A The particular examination in detail was made in March, 1920.

Q Who was with you, if anybody?

A H. J. Humphreys, of Mecca.

Q Now, referring to the plat -- blueprint which I have placed on the board, I will ask you who made that, if you know?

A I did.

Q Does that correctly represent the situation there as to the land?

A It does.

Q Now, referring to the east half of Section 8, will you step down there with the pointer and indicate to the Court and Jury.

(Testimony of A. A. Wilhelm.)

A this from this corner to this, represents one mile.

Q Well, give the legal description so the Reporter can get it. Indicating the southeast corner of 8.

A This point indicates the southeast corner of Section 8, Township 8 South, Range 11 East. The distance from this corner to this is one mile. This corner represents the northeast corner of Section 8. Outlined in red is one-half section representing the east half of Section 8. East of this line is Section 9. South of the line, on the south line of Section 8, is Section 17. Only three-fourths of Section 17 is shown here - - the south half of the south half, which is further down. East of Section 17 is Section 16. Only three-fourths of Section 16 being shown on the blue-print.

Q Now, you carefully examined Sections 8 and 9, 17 and 16 there?

A I did.

Q You went over the land. Now, describe the east half of Section 8 and what those characters indicate on there.

MR W. S. Allen: If the Court please, we will object to it as being incompetent, irrelevant and immaterial. The only proper proof would be the field notes of the Government surveyor.

THE COURT: Objection overruled.

MR W. S. ALLEN: Note an exception.

Q BY MR GREEN: You made a personal examination of it yourself?

(Testimony of A. A. Wilhelm.)

A I did, at this point.

Q Which is what?

A Which represents the northeast corner of Section 8. There is a row of stakes - -

THE COURT: What?

A An old stake - - a Government survey monument. From that stake I measured one-half mile to this point (indicating.)

Q BY MR GREEN: Which is what?

A Which is the north center of Section 8. From the point of beginning, going westward, the land rises abruptly. For a few chains from the starting point the land is level.

Q Just a moment, Mr. Wilhelm: For the benefit of the Jury, will you indicate what distance is a chain - - how many feet?

A A chain is 66 feet; 80 chains make one mile.

Q All right; proceed.

A From the starting point to the next point, which I indicate, would be one-quarter of a mile, or 20 chains. Before making 20 chains, a few feet, the land becomes very steep and broken, covered with bowlders and entirely too rough for any agricultural purpose.

MR W. S. ALLEN: If the Court please, we ask to have that stricken out as a conclusion of the witness.

THE COURT: It will be stricken out.

Q BY MR GREEN: Just describe the land, Mr Wilhelm - - the character of the soil in there, Mr Wilhelm?

MR W. S. ALLEN: Objected to as being irrelevant and immaterial.

(Testimony of A. A. Wilhelm.)

THE COURT: Overruled.

MR W. S. ALLEN: Exception, please, in each of those.

A The soil in the northeasterly portion of that quarter-section is sand.

Q BY MR GREEN: I call your attention to three little characters there. What do they indicate?

A High sand dunes - - small mountains of sand.

Q Covered by vegetation?

A Practically nothing; very few small sagebrush around the base.

Q Proceed.

A The westerly portion of the tract consists of a sandstone ridge, the center of the sandstone ridge crossing the west line of this half-section near the northwest corner.

MR W. S. ALLEN: If the Court please, at this time we object to the use of this map for the reason that he has some characters drawn on there which, in my judgment, would tend to prejudice this defendant, by being the conclusions of this witness. If the map were without those lines, merely the section lines, we have no objection to it, but we do object to those characters being drawn on there in that Section in that way, and we therefore think that the use of this map is prejudicial to the defendant, and we will object to it.

THE COURT: I will let him explain what those characters are. The objection will be overruled. (Ad-

dressing the witness) Explain what the characters are.

A The marks running almost north and south, a little northwesterly and southeasterly, represent the course of the high sandstone ridge upon which there is no soil. The characters extending eastward represent washes which break up the surface and the land slopes from the west to the east at the rate of about 300 feet to the mile.

Q BY MR GREEN: Now, extending on down to the southeast quarter of the Section, describe that.

A The same sandstone ridge crosses it, but covers not quite so great a portion as is covered in the northeast quarter. From a survey which I made, extending around the half-section, I have shown here with the meander line, approximately, the land which could be plowed or tilled if other conditions were favorable. West of that meander line the sandstone extends to the surface.

Q Approximately how high is that sand ridge -- I mean how high above the east line of Section 8, would you say?

A At least 150 feet.

Q At least that. Now, you have called attention to a meandering line there. Take the northeast quarter; what does that represent? Referring to the northeast quarter of Section 8, now, what does that meandering line represent?

A A division of the land which has a surface soil and a land which has no surface soil.

MR W. S. ALLEN: If the Court please, we object

(Testimony of A. A. Wilhelm.)

to this question and answer on the ground that it is incompetent, irrelevant and immaterial. It is a conclusion of this witness as to what the contour or surface of this land may be, and what it is useful for, and how much of it could be used. On the further ground that it does not prove or tend to prove any issues in this case, the question being whether he was shown this land, or not.

THE COURT: Well, I don't know whether the evidence is material at the present time. I think it is relevant, but I think this witness might be further qualified as to give his opinion concerning the character of the soil.

MR GREEN: Yes, sir; we intend to do that just as soon as we get through with the description.

THE COURT: Objection overruled.

MR W. S. ALLEN: If the Court please, our objection goes to that, that it is immaterial as to the character of the soil.

THE COURT: Well, I don't know. The character of the soil sometimes is important in the case for the purposes of showing that a man could not be fooled or that he could be fooled. I will overrule the objection.

MR W. S. ALLEN: May I make the further objection, your Honor, that under the pleadings in this case the character of the soil is not brought in question. The question is whether he was shown this particular section of land.

THE COURT: Yes. Well, that may be so, but

(Testimony of A. A. Wilhelm.)

it would assist or tend to show that the man was intending to perpetrate a fraud. Fraud is involved here. I will overrule the objection.

MR W. S. ALLEN: Exception.

Q BY MR GREEN: Now, approximately how much land in the northeast quarter of that Section could be cultivated for any purpose?

MR W. S. ALLEN: Objected to on the ground that no proper foundation has been laid for it.

Q BY MR GREEN: Are you familiar with all the land in that district, and its particular soil and what it produces?

A I am.

Q BY THE COURT: How long have you been acquainted with lands of that character?

A Oh, for ten years.

Q And do you know what land in that neighborhood can be cultivated and what land cannot be cultivated?

A I do.

Q Do you know what the lands will grow and what they will not grow? What lands will grow things and what will not grow?

A I do.

Q Have you been making a study of it for ten years?

A I have.

THE COURT: The objection will be overruled.

MR W. S. ALLEN: If the Court please, we will enter an objection to all those questions on the ground that they are incompetent, irrelevant and immaterial.

(Testimony of A. A. Wilhelm.)

THE COURT: Well, the objection is overruled.

MR W. S. ALLEN: An exception, please.

Q BY MR GREEN: Answer the question as I originally asked it, Mr. Wilhelm.

A. About thirty acres.

Q About thirty acres out of what portion?

A 160, in the northeast quarter.

Q Now, as to the southeast quarter of Section 8?

A About 50 acres

Q BY THE COURT: How many?

A 50.

Q 50 acres?

A Out of 160.

Q BY MR GREEN: Now, I call your attention to the triangular shape there. Indicate on there with chalk if there is any road leading to or from that land, or any highway, if you remember, approximately?

A Approximately, this is the line of an old wagon-road that leads across the desert (indicating).

Q Take it clear down to where it leads, if you know.

A Back here to the Salton Railway Station.

Q Approximately what distance from the railway station to where it intersects the south line of Section 8 - - south-east corner of the section?

A 1-1/2 miles.

Q Now, did you travel that road?

A I did not.

Q Are you familiar with the water conditions in that particular district?

(Testimony of A. A. Wilhelm.)

A I am; I have made extensive investigations.

Q As to the east half of Section 8, what are the water conditions there, if you know?

MR L. W. ALLEN: Now, if your Honor please, we object to that question on the ground that it is incompetent, irrelevant and immaterial, and makes no difference whether there is any water there, or not.

THE COURT: Well, I think it might make a great deal of difference.

MR GREEN: I should say it would.

THE COURT: Whether a man wanted to buy it or not, or enter it.

MR L. W. ALLEN: Well, that is so, too, your Honor, but the question in this case is, first, was it the Government land, and, second, was the man shown this land?

THE COURT: Yes; and he was shown land for the purpose of getting money out of him to locate it. Now, if you locate a man - - show a man a good forty acres and say, "This is a certain described forty acres", and it looks good to him, he is liable to put up money; but if it is all rock and hill, he is not liable to put up money. There is where the fraud comes in.

MR L. W. ALLEN: Certainly.

THE COURT: Objection overruled.

MR L. W. ALLEN: Exception, please.

A Along the east line of each of these quarter sections water might be developed in wells in sufficient quantities for irrigation purposes.

MR W. S. ALLEN: Objected to, if the Court Please, as calling on this man's imagination - - a mere

(Testimony of A. A. Wilhelm.)

conclusion of the witness. Wells might be drawn anywhere.

THE COURT: The objection will be overruled.

MR W. S. ALLEN: Exception.”

And the witness Wilhelm testified further on direct and cross examination, and thereupon other witnesses were called and testified on behalf of the government, and the defendant took the stand and testified in his own behalf, and was cross examined by the United States Attorney.

The defendant requested that the jury be instructed as follows:

DEFENDANT'S INSTRUCTION NO. 2.

“The Court instructs you that any representation made by the defendant as to the quality of the land shown, or as to the nature of the land shown, or as to what the land shown could produce, or as to whether water for irrigation or domestic use could be developed or found upon the land shown, is not a representation of the “particular surveyed description” of the land so shown.”

DEFENDANT'S INSTRUCTION NO. 6.

“The Court instructs you that if you shall believe from the evidence that the defendant Anderson showed Mr. Rood the land upon which the defendant Anderson filed him, then the defendant is not guilty of any violation of Chap. 115, Act of Feb. 23, 1917, and you will therefore return a verdict of “not guilty” upon the second count of the indictment.”

DEFENDANT'S INSTRUCTION NO. 8.

"The Court instructs you that even if you shall believe from the evidence that the defendant Anderson made false representations to Zsinko, and to Rood and to O'Hagan as to the quality of their respective land, or as to what their lands would produce, or as to the number of acres thereof which were inundated by the waters of the Salton Sea, or as to whether water for irrigation or domestic use could be produced upon their land; if nevertheless and notwithstanding such representations just enumerated you shall believe that the defendant showed Zsinko, Rood and O'Hagan respectively the land upon which the defendant located them, then your verdict will be "not guilty" upon each of the three counts to the indictment."

The defendant requested the Court to request the jury to make special findings on the following question:

"Did the defendant Anderson take Mr. Rood onto the land and show him the land upon which the defendant filed him?

"Answer:"

The Court then instructed the jury as follows:

INSTRUCTIONS TO JURY

THE COURT: The law under which the defendant is being prosecuted has been read to you, but I will read it again.

"Any person who for a reward paid or promised to him in that behalf" --

There does not seem to be any controversy here but what a reward was paid or promised in each of these three cases - -

“Any person who for a reward paid or promised shall undertake to locate for an intending purchaser, settler or entryman any public lands of the United States subject to disposition under the public land laws, and who shall wilfully and falsely represent to such intending purchaser, settler or entryman that any tract of land shown to him is public land of the United States, subject to sale, settlement or entry, or that it is of a particular surveyed description, with intent to deceive the person to whom such representation is made, or who in reckless disregard of the truth shall falsely represent to any such person that any tract of land shown to him is public land of the United States, subject to sale, settlement or entry, or that it is of a particular surveyed description, thereby deceiving the person to whom such representation is made, shall be deemed guilty of a misdemeanor and shall be punished,” and so forth.

Now, the punishment is of no matter to you. That is for the Court. The punishment specified is that he shall be punished by a fine not exceeding \$300, or by imprisonment for a term not exceeding one year; that is to say, the maximum is given, but there is no minimum specified. Now, gentlemen, this law is a simple matter, but yet it may be confusing to you, and I am

going to talk very carefully to you so that you may understand.

(The Court descended from the bench and stood before the Jury, where a certain map was suspended upon a rack).

Now, in the Zsinko case, Zsinko was located -- in the Land Office, the defendant had Zsinko locate these lands (indicating on map). Now, Zsinko testified that the lands the defendant showed him were these lands (indicating on map), and told him that he was being located on these lands, and not these lands (indicating). Now, it may be that the defendant showed him these lands, but the question is, did he represent that these lands were described according to these lands (indicating). It was not necessary for the defendant to say in so many words to Mr. Zsinko, "Your land is of a certain description." Zsinko depended upon him, when he got to the Land Office, to write in the application for entry of homestead the land which the defendant had shown him; and if he wrote some other description in, instead of the land he showed him, why then he would make a representation that would be false, according to the statute. It is a question, of course, of veracity between Zsinko and the defendant, as to whether or not these are the lands he showed him, or those (indicating).

Now, you take this land here to Rood (indicating), the east half of section 8, Township 8 South, Range 11. That is the land, now, that Rood located in the Land Office. Well, it is claimed in the testimony by Mr. Rood that he did not show him this land at all

as being the land that he was going to locate, but he showed him other land in here (indicating). And of course, if he showed him this land and took him to the Land Office and had him locate on this land (indicating), the making out the papers for him to sign and locate on that land would be a misrepresentation concerning the particular description, referred to in the statute.

And it is the same with this location here (indicating). If he showed him one tract and took him to the Land Office, and in reckless disregard of the truth wrote a different description in the Land Office from what he had shown him on the ground, why then he committed the crime condemned by the statute.

Now understand, gentlemen, that the United States statute does not make it a crime for a fellow or a man to misrepresent the character of the soil. It was not a crime, although it may have been ever so villainous, for the defendant to say to these men, "This land here on the desert is as good as this land in Mecca that I showed you." It is not a crime under the United States statute for him to represent that this is a well and this water is sweet, when in fact it was a cistern and the water in the wells was bitter. That would not be a crime denounced by the statute.

Now, for instance, if you were to go out on the desert to locate a piece of land, you would not know whether it was the southeast quarter of the northwest quarter of some section, township and range; you would not know anything about it. Now, Congress has said that a man who pretends to know about those

things and know about the description of land, who undertakes for a reward to point out certain lands to a man, and he points out certain land and tells this man that that is a certain described section, congressional subdivision, and it is not that subdivision at all, -- why, he has violated the statute. Now, Congress leaves to the State of California the subject of punishing men for false representations concerning the quality of the soil or the quality of the water. So, gentlemen, if this tract of land up there where those sand-dunes are pictured, Mr. Rood's, and those hills, if he showed him that land and said, "Here is the land now you are going to enter", when it was not that land at all that he showed him, but some other flat, level, sandy soil, why then he committed a crime.

Now, I think I have made that plain to you. If the defendant told these people that the soil up here on this desert was equivalent to the soil in Mecca, that grows those beautiful date palms and the fine alfalfa, -- if he told them that, you have a right to take it into consideration in weighing the testimony, in comparing the testimony of Rood, for instance, with the defendant. If the defendant misrepresented the facts concerning the land, you cannot convict him for those misrepresentations, but you have got a right to take it into consideration when you come to weigh his testimony with the testimony of these other witnesses, and consider that if he made false representations in one regard, he may have made them in another.

Now, I am not intimating to you, gentlemen, how you shall decide this question. It is for you. You

are the exclusive judges of the facts and the credibility of the witnesses. You must accept the law as I state it to you, but when it comes to determining the facts, as to whether or not this man made misrepresentations as charged in the indictment, you are the exclusive judges of that. The law has divided our duty. Your duty is one thing, and mine is another.

In weighing the testimony of these witnesses, you shall take into consideration the reasonableness of what they said when they were on the witness-stand, their manner, conduct, their intelligence, and the interest they had in the matter, their prejudice, and all other things that may appeal to you to determine whether or not a man told the truth.

And when you come to consider the interest, I take it that you shall regard the testimony of these three men who are testifying here, their feelings in the matter, and you shall take into consideration the interest the defendant has in the suit, or the result of it, as to what influence that may have on his testimony, whether the interest that he has in the result of the suit is such as will tempt him to color, pervert or withhold the truth. And if any witness has wilfully testified falsely in this case, you have a right to disregard any part or all of his testimony.

Now, gentlemen, you have heard me instruct you before concerning a reasonable doubt. The indictment raises no presumption against the defendant. He is presumed to be innocent until the contrary is proven, and that presumption attends him throughout the trial and until he is proven guilty. You cannot convict the

defendant unless you are satisfied beyond a reasonable doubt of his guilt. In a civil suit you decide the case according to the preponderance of the evidence, but in a criminal case the evidence must show and satisfy you beyond a reasonable doubt, so that there is some difference in weighing the evidence and the weight it has in your reaching a verdict. Now, it is hard to tell what a reasonable doubt is, but there are some things that the courts have determined and juries are instructed concerning this reasonable doubt. It does not mean that all doubt is to be excluded. You cannot be absolutely certain of the things in this life. You must act upon the strong probabilities of the case; discard the unreasonable things about the evidence; act upon the things that you believe and can tie to and firmly believe, and the probabilities should be so strong as not to exclude all doubt, but to exclude reasonable doubt. If you have an abiding conviction that the defendant is guilty, it is your duty to convict; if you have not an abiding conviction, it is your duty to acquit.

Is there anything more, gentlemen, you would have me say to the jury or any exceptions to the charge?

(no response).

THE COURT: Swear a bailiff.

THE CLERK: You have not instructed them as to the form of verdict.

THE COURT: A form of verdict will be handed you, gentlemen. If you find the defendant guilty on either of the counts, you need not fill in the blank. If you find him not guilty, write in the word "not". Now,

there are three counts in indictment. You can find him guilty on one, two or three, or not guilty on one, two or three. Elect one of your number foreman, and when you shall have agreed upon a verdict, let the foreman sign it. You cannot return a verdict unless you concur therein. Swear a Bailiff.

(Whereupon a Bailiff was sworn to take charge of the Jury).

MR GREEN: May the Jury have the letters and agreements?

THE COURT: I suppose there is no objection to taking the exhibits, or any part of them, to the jury-room. And let them take the indictment.

MR GREEN: And the plats, if they desire, any and all of them.

MR W. S. ALLEN: If your Honor please, I did not hear any instruction to the Jury as to the special findings requested.

THE COURT: There is no practice of that kind.

MR W. S. ALLEN: Note an exception.

MR GREEN: One of the Jurors just suggested taking this map with them. It is not in evidence, but I am perfectly willing for it to go.

MR W. S. ALLEN: Certainly.

THE COURT: Give them to the Bailiff. Take the indictment, Mr. Bailiff.

THE CLERK: Are all these exhibits to go?

MR GREEN: Yes.

THE COURT: Follow the Bailiff, gentlemen.

(WHEREUPON THE JURY RETIRED IN CHARGE OF THE BAILIFF TO CONSIDER OF THEIR VERDICT)."

The above and foregoing contains that part of the proceedings had upon the trial upon which the defendant desires to appeal.

That following the conviction of the defendant on the second count of the indictment, the Court on October 25, 1920, regularly pronounced sentence upon the defendant and adjudged that under the conviction upon the second count of the indictment the defendant be imprisoned for the term of ten months in the Los Angeles County Jail.

Thereupon, to-wit, on October 25, 1920, the defendant in open court petitioned the Court for a writ of error, which said petition was thereupon granted and allowed by the Court and the Court thereupon fixed a supersedeas bond upon appeal in the sum of \$1000.00 to be duly given by the defendant.

That thereupon on the 25th day of October, 1920, a writ of error was duly issued in said cause, returnable before the United States Circuit Court of Appeals, for the Ninth Circuit.

That thereupon, upon said date, citation upon said writ of error was duly issued, served upon the United States District Attorney, and filed with the Clerk of said Court. The indictment, writ *or* error, citation on writ of error, assignment of error, and the various orders and proceedings of the Court referred to herein are fully set out in the printed transcript of record on appeal of the Clerk to be filed herein and ordered to be printed herewith.

And, for as much as the evidence and proceedings and matters of exception above set forth do not fully

appear of record, the defendant by his attorneys, tenders this bill of exceptions and prays that the same be signed and sealed by the Court herein, pursuant to the statute in such case made and provided.

Lawrence W. Allen

W. S. Allen

Hubert W. Swender

Attorneys for Defendant.

Defendant, T. M. Anderson, hereby presents the foregoing as his bill of exceptions herein and respectfully asks that the same may be allowed.

Lawrence W. Allen

W. S. Allen

Hubert W. Swender

Attorneys for Defendant.

To Robert O'Connor, Esquire, United States District Attorney for the Southern District of California:

You will please take notice that the foregoing constitutes and is the bill of exceptions from the defendant in the above entitled action, and the said defendant will ask for allowance of the same.

Lawrence W. Allen

W. S. Allen

Hubert W. Swender

Attorneys for Defendant.

Service of the foregoing bill of exceptions is hereby acknowledged this 16th day of November, 1920.

Milton Bryan

Assistant United States District

Attorney for the United States of

America.

It is hereby stipulated that the foregoing bill of exceptions is correct and that the same be settled and allowed by the Court.

Lawrence W. Allen

W. S. Allen

Hubert W. Swender

Attorneys for Defendant.

Robert O'Connor

United States Attorney.

The foregoing bill of exceptions having been duly presented to the Court, the same is hereby duly allowed and signed and made a part of the records in this cause.

Dated this 15 day of December, 1920.

Trippet

JUDGE

[Endorsed]: No. 2360 Criminal In the District Court of the United States of America In and for the Southern District of California Southern Division United States of America Plaintiff vs T. M. Anderson Defendant. Bill of Exceptions. Filed Dec 16 1920 at — min. past — o'clock — M. CHAS. N. WILLIAMS, Clerk Louis J. Somers Deputy Allen, Allen & Swender 620 Ferguson Bldg. Tel. 14463 Main 4463 Los Angeles, California Attorneys for Defendant

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION.

UNITED STATES OF)	
AMERICA,)	
)	
	)	Plaintiff,
vs.	)	No. 2360-Crim.
)	
)	
T. M. ANDERSON,	)	ASSIGNMENT
	)	OF ERRORS.
)	
)	
	)	Defendant.
)	

Comes now T. M. Anderson, the defendant above named, and files the following statement and assignment of errors, upon which he will rely in the prosecution of a writ of error upon the above entitled cause.

I.

The Court erred in overruling defendant's objection to the following question, propounded by plaintiff to the witness A. A. Wilhelm: (Page 4 of Reporter's Transcript.)

"Q BY MR GREEN: Just describe the land, Mr. Wilhelm, — the character of the soil in there, Mr. Wilhelm?

"MR W. S. ALLEN: Objected to as being irrelevant and immaterial.

"THE COURT: Overruled."

II.

The Court erred in overruling defendant's objection to the following question propounded by plaintiff to

the witness A. A. Wilhelm: (Page 6 of Reporter's Transcript.)

"Q At least that. Now, you have called attention to a meandering line there. Take the northeast quarter; what does that represent? Referring to the northeast quarter of Section 8, now, what does that meandering line represent?

A A division of the land which has a surface soil and a land which has no surface soil.

MR W. S. ALLEN: If the Court please, we object to this question and answer on the ground that it is incompetent, irrelevant and immaterial. It is a conclusion of this witness as to what the contour or surface of this land may be, and what it is useful for, and how much of it could be used. On the further ground that it does not prove or tend to prove any issues in this case, the question being whether he was shown this land, or not.

THE COURT: Well, I don't know whether the evidence is material at the present time. I think it is relevant, but I think this witness might be further qualified as to give his opinion concerning the character of the soil.

MR GREEN: Yes, sir; we intend to do that just as soon as we get through with the description.

THE COURT: Objection overruled.

MR W. S. ALLEN: If the Court please, our objection goes to that, that it is immaterial as to the character of the soil.

THE COURT: Well, I don't know. The character of the soil sometimes is important in

the case for the purposes of showing that a man could not be fooled or that he could be fooled. I will overrule the objection.

MR W. S. ALLEN: May I make the further objection, your Honor, that under the pleadings in this case the character of the soil is not brought in question. The question is whether he was shown this particular section of land.

THE COURT: Yes. Well, that may be so, but it would assist or tend to show that the man was intending to perpetrate a fraud. Fraud is involved here. I will overrule the objection.

MR W. S. ALLEN: Exception."

III.

The Court erred in overruling defendant's objection to the following question propounded by plaintiff to the witness A. A. Wilhelm: (Page 7 of Reporter's Transcript.)

"Q BY MR GREEN: Now, approximately how much land in the northeast quarter of that Section could be cultivated for any purpose?

MR W. S. ALLEN: Objected to on the ground that no proper foundation has been laid for it.

Q BY MR GREEN: Are you familiar with all the land in that district, and its particular soil and what it produces?

A I am.

Q BY THE COURT: How long have you been acquainted with lands of that character?

A Oh, for ten years.

Q And do you know what land in that neighborhood can be cultivated and what land cannot be cultivated?

A I do.

Q Do you know what lands will grow and what they will not grow? What lands will grow things and what will not grow?

A I do.

Q Have you been making a study of it for ten years?

A I have.

THE COURT: The objection will be overruled.

ME W. S. ALLEN: If the Court please, we will enter an objection to all those questions on the ground that they are incompetent, irrelevant and immaterial.

THE COURT: Well, the objection is overruled.

MR W. S. ALLEN: An Exception, please."

IV.

That the Court erred in overruling defendant's objection to the following question propounded by plaintiff to the witness A. A. Wilhelm: (Page 9 of Reporter's Transcript.)

"Q As to the east half of Section 8, what are the water conditions there, if you know?

MR. L. W. ALLEN: Now, if your Honor please, we object to that question on the ground that it is incompetent, irrelevant and immaterial,

and makes no difference whether there is any water there, or not.

THE COURT: Well, I think it might make a great deal of difference.

MR GREEN: I should say it would.

THE COURT: Whether a man wanted to buy it or not, or enter it.

MR L. W. ALLEN: Well, that is so, too, your Honor, but the question in this case is, first, was it the Government land, and, second, was the man shown this land?

THE COURT: Yes; and he was shown land for the purposes of getting money out of him to locate it. Now, if you locate a man -- show a man a good forty acres and say, "This is a certain described forty acres," and it looks good to him, he is liable to put up money; but if it is all rock and hill, he is not liable to put up money. There is where the fraud comes in.

MR L. W. ALLEN: Certainly.

THE COURT: Objection overruled.

MR L. W. ALLEN: Exception, please.

A Along the east line of each of these quarter sections water might be developed in wells in sufficient quantities for irrigation purposes.

MR W. S. ALLEN: Objected to, if the Court please, as calling on this man's imagination -- a mere conclusion of the witness. Wells might be drawn anywhere.

THE COURT: The objection will be overruled.

MR W. S. ALLEN: Exception."

V.

The Court erred in refusing to give the following instruction requested by the defendant:

“DEFENDANT’S INSTRUCTION NO. 2.

The Court instructs you that any representation made by the defendant as to the quality of the land shown, or as to the nature of the land shown, or as to what the land shown could produce, or as to whether water for irrigation or domestic use could be developed or found upon the land shown, is not a representation of the “particular surveyed description” of the land so shown.”

VI.

That the Court erred in refusing to give the following instruction requested by the defendant:

“DEFENDANT’S INSTRUCTION NO. 6.

The Court instructs you that if you shall believe from the evidence that the defendant Anderson showed Mr. Rood the land upon which the defendant Anderson filed him, then the defendant is not guilty of any violation of Chap. 115, Act of Feb. 23, 1917, and you will therefore return a verdict of “not guilty” upon the second count of the indictment.”

VII.

That the Court erred in refusing to give the following instruction requested by the defendant:

“DEFENDANT’S INSTRUCTION NO. 8.

“The Court instructs you that even if you shall believe from the evidence that the defendant An-

derson made false representations to Zsinko, and to Rood and to O'Hagan as to the quality of their respective land, or as to what their lands would produce, or as to the number of acres thereof which were inundated by the waters of the Salton Sea, or as to whether water for irrigation or domestic use could be produced upon their land; if nevertheless and notwithstanding such representations just enumerated you shall believe that the defendant showed Zsinko, Rood and O'Hagan respectively the land upon which the defendant located them, then your verdict will be "not guilty" upon each of the three counts to the indictment."

VIII.

That the Court erred in instructing the jury as follows: (Page 15, lines 4 to 11, Reporter's Transcript.)

"If the defendant misrepresented the facts concerning the land, you cannot convict him for those misrepresentations, but you have got a right to take it into consideration when you come to weigh his testimony with the testimony of these other witnesses, and consider that if he made false representations in one regard, he may have made them in another."

IX.

That the Court erred in refusing to request the jury to make a special finding on the following question:

“Did the defendant Anderson take Mr. Rood onto the land and show him the land upon which the defendant filed him.

Answer: ”

AND, upon the foregoing Assignment of Errors and upon the Bill of Exceptions, and upon the record in said case, the defendant prays that the verdict and judgment rendered therein may be reversed.

Dated this 25th day of October, 1920.

Lawrence W. Allen

W. S. Allen

Hubert W. Swender

Attorneys for Defendant.

We hereby certify that the foregoing assignment of errors is made in behalf of the petitioner for writ of error, and is, in our opinion, and the same now constitutes, the assignment of errors upon the writ prayed for.

Lawrence W. Allen

W. S. Allen

Hubert W. Swender

Attorneys for Defendant.

[Endorsed]: No. 2360 – Crim. DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION UNITED STATES OF AMERICA, Plaintiff, vs. T. M. ANDERSON, Defendant. ASSIGNMENT OF ERROR Filed Nov 16 1920 at — min past — o'clock — M CHAS. N. WILLIAMS, Clerk Louis J. Somers, Deputy

UNITED STATES OF AMERICA

District Court of the United States
SOUTHERN DISTRICT OF CALIFORNIA

United States of America	}	CLERK'S OFFICE
Plaintiff		
vs	}	No. 2360 Crim.
T. M. Anderson		
Defendant	}	PRÆCIPE

TO THE CLERK OF SAID COURT:

Sir:

Please issue a certified transcript of the following matters and documents or copies thereof, including endorsements, upon Writ of Error, to the United States District Court for the Southern District of California, Southern Division, to wit:

1. The Judgment Roll
2. Petition for Writ of Error
3. Assignment of Errors
4. Order allowing Writ of Error
5. Writ of Error
6. Citation to the United States of America on Writ of Error
7. Certificate of Clerk of the United States District Court, to Record

8. Bill of Exceptions
9. Praeipce

Lawrence W. Allen

W. S. Allen

Hubert W. Swender

Attorneys for Defendant.

[Endorsed]: Original *No.* 2360 Crim. U. S. District Court SOUTHERN DISTRICT OF CALIFORNIA United States of America Plaintiff vs T. M. Anderson Defendant PRÆCIPE FOR Filed Dec 16 1920 at — min. past — o'clock — M Chas N. WILIAMS, Clerk Louis J. Somers Deputy.